



competitive mobile services market is, as the Notice acknowledges, unjustified.<sup>4</sup> Current market conditions<sup>5</sup> and existing regulatory safeguards<sup>6</sup> effectively prevent wireline carriers from engaging in anti-competitive activities, including offering discriminatory interconnection arrangements and cross-subsidizing services. The Commission expressly recognized this fact when it permitted wireline carriers to hold, without restriction, broadband and narrowband personal communications services ("PCS") licenses.<sup>7</sup>

In the current mobile services market, not only will the elimination of the SMR wireline restriction pose no competitive harm, elimination of the restriction will substantially bolster the competitive provision of mobile services and further important regulatory parity objectives. SMR providers such as RMD urgently need access to the capital and technical expertise of wireline carriers in order to compete with large, well-funded competitors in the mobile data industry (*e.g.*, ARDIS and McCaw), and in SMR generally (*e.g.*, Nextel). Indeed the Notice acknowledges that the resources of wireline carriers can play an important role in assisting SMR operators to upgrade their existing networks,<sup>8</sup> thereby expanding and improving the range of SMR services available to the public. Without immediate access to wireline financial support and technical expertise, SMR providers are at risk of being overwhelmed by their competitors, competitors with unrestricted access to the vast resources of their corporate parents and affiliates.

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<sup>4</sup> Notice at ¶ 16.

<sup>5</sup> RMD agrees with the Commission's conclusion that the SMR industry is sufficiently well-established that LEC entry is unlikely to hinder further development of the service. *Id.* at 21.

<sup>6</sup> For instance, Section 201 of the Communications Act of 1934, as amended, (the "Act") requires that carriers provide reasonable interconnection to any carrier that requests it, and Section 332(c)(1)(B) of the Act requires the Commission pursuant to Section 201 to order common carriers to interconnect with commercial mobile radio service ("CMRS") providers on reasonable request. Moreover, independent accounting safeguards currently protect against cross-subsidization in the event of the elimination of the SMR wireline restriction. The Commission has already decided to extend its joint cost and affiliate transaction rules to all CMRS providers with LEC affiliates. *See* Second Report and Order, 9 FCC Rcd 1411 (1994) at ¶ 218.

<sup>7</sup> Second Report and Order, 8 FCC Rcd 7700 (1993) at ¶ 126; First Report and Order, 8 FCC Rcd 7162, 7167 (1993).

<sup>8</sup> Notice at ¶ 24.

In this regard, the elimination of the SMR wireline restriction substantially furthers the overriding aim of the regulatory parity legislation: To subject like service providers to comparable regulatory schemes. Because other CMRS providers (*e.g.*, cellular, narrowband PCS and broadband PCS providers) are not constrained by an equivalent restriction to that contained in Section 90.603(c), the SMR wireline restriction is flatly at odds with regulatory parity concerns. Placing SMR providers at a competitive disadvantage *vis-a-vis* other CMRS providers will, in the end, reduce the overall level of competition in the mobile services market, a result Congress plainly never intended to bring about when passing the parity legislation.

## II. STRUCTURAL SAFEGUARDS ARE UNNECESSARY AND WOULD UNDERMINE REGULATORY SYMMETRY

The Notice inquires whether, assuming the wireline restriction is eliminated, structural separation requirements are necessary to protect against cross-subsidization and discriminatory pricing by LECs.<sup>9</sup> As discussed above,<sup>10</sup> in light of the existing accounting safeguards that apply to LECs with CMRS operations, structural safeguards are unnecessary. Indeed, the Commission relied upon the efficacy of these accounting safeguards when it determined that no separate subsidiary requirements should be imposed on LECs that hold PCS licenses.<sup>11</sup>

In the case of PCS, not only was the imposition of structural safeguards found to be unjustified to prevent cross-subsidization, the Commission concluded that their imposition actually would impede the ability of wirelines to benefit from potential economies of scale and threaten other public interest benefits of wireline participation in PCS.<sup>12</sup> This conclusion applies with equal force to LEC participation in the provision of SMR services.

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<sup>9</sup> Id. at ¶ 27. The Notice defers consideration of whether any other SMR eligibility restrictions might be appropriate, including restrictions on cellular eligibility to hold SMR licenses. Notice at ¶ 28. While RMD believes that existing non-structural safeguards and the CMRS spectrum cap the Commission recently adopted ensure that no one entity, including cellular licensees, could pose a competitive threat to the mobile services market, because the Notice expressly defers consideration of this issue, RMD will not address it herein.

<sup>10</sup> See n. 6, *supra*.

<sup>11</sup> Second Report and Order, 8 FCC Rcd 7700 at ¶126.

<sup>12</sup> Id.

Moreover, applying structural separation requirements to LEC/SMR ventures without applying these same requirements to LEC/PCS ventures would undermine regulatory parity objectives. In short, SMR providers would not have access to the resources of their affiliated LECs to the same degree as PCS providers, thereby placing SMR operators at a competitive disadvantage.

### III. THE WIRELINE RESTRICTION SHOULD BE ELIMINATED ON AN EXPEDITED BASIS

Elimination of the SMR wireline restriction is long-overdue. The Commission first formally proposed to abolish the restriction in a Notice of Proposed Rulemaking released in 1986,<sup>13</sup> but because that proceeding was allowed to languish, it was terminated in 1992 with no decision made.<sup>14</sup> Moreover, while RMD submitted a request for waiver of Section 90.603(c) approximately one year ago,<sup>15</sup> the Commission has yet to act on the request, notwithstanding the fact that grant of the waiver was strongly endorsed by the weight of comments filed in that proceeding.

Importantly, the continuation of the wireline eligibility restriction causes continuing injury and hardship to SMR providers who urgently require greater investment from wireline affiliates to remain competitive in the mobile data marketplace, a marketplace increasingly marked by the presence of large participants with ready access to the extensive capital and expertise of their corporate parents and

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<sup>13</sup> Notice of Proposed Rule Making, PR Docket No. 86-3 (1986).

<sup>14</sup> Order, 7 FCC Rcd 4398 (Released July 15, 1992).

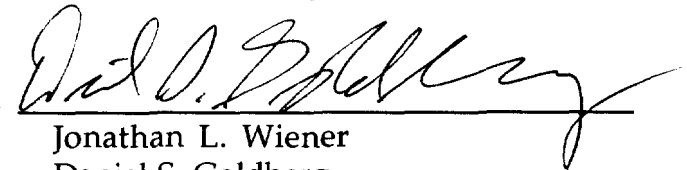
<sup>15</sup> See RMD Request for Transfer of Control and Rule Waiver (filed September 22, 1993).

affiliates. In light of this pressing need, as well as the absence of any compelling public interest benefit in retaining the restriction, the Commission should abolish the SMR wireline restriction on an expedited basis. Such a result will promote a competitive mobile services market and further important regulatory parity objectives.

Respectfully submitted,

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October 5, 1994